APPENDIX

[Filed Feb. 1, 2001]

No. 00-___

IN THE
SUPREME COURT OF THE UNITED STATES

US AIRWAYS, INC.
Petitioner,

v.

ROBERT BARNETT,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Americans with Disabilities Act ("ADA") prohibits covered employers from "discriminating" in the terms and conditions of employment, and defines "discrimination" to include "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or an employee." 42 U.S.C. § 12112(b)(5)(A). The questions presented in this petition are:

1. Whether, as the *en banc* Ninth Circuit held below, the ADA requires an employer to reassign a disabled employee to a different position as a "reasonable accommodation" even though another employee is entitled to hold the position under the employer's bona fide and established seniority system, or whether, as other courts of appeals have held, the ADA's "reasonable accommodation" requirement does not compel an employer to disregard the rights of other employees under its seniority policy.

2. Whether, as the *en banc* Ninth Circuit held below, evidence of an employer's failure to engage in an interactive process with a disabled employee to identify reasonable accommodations precludes the employer from obtaining summary judgment in an ADA action, or whether, as other courts of appeal have held, any failure on the part of the employer to engage in such an interactive process is of no legal consequence in determining whether the employer violated the ADA.

Respectfully submitted,

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